

Wendy Alison Nora
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ORDER ENTERED: August 29, 2012

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

-----X
In re

Residential Capital, LLC *et al.*,

Chapter 11

.

Debtors.

Case No. 12-12020 (MG)
Administratively Consolidated

-----X
AMENDED

STATEMENT ACKNOWLEDGING DEBTORS' RESPONSE OF AUGUST 27, 2012 AND
ACCEPTING THEIR PROMISE TO PROVIDE HER WITH NOTICE OF ANY ATTEMPT
TO SELL HER HOME UNDER THE "DEMINIMUS SALES" ORDER SOUGHT UNDER 11
USC SEC. 363 AND FURTHER ACKNOWLEDGING DEBTORS' ADMISSION THAT THE
PROPERTY SCHEDULED AS AN ASSET OF THE ESTATE OF RESIDENTIAL FUNDING
COMPANY, LLC (Case No. 12-12019) IS NOT PROPERTY OF THE ESTATE BUT IS HER
HOME AND HER PROPERTY (JUDICIAL AND PROMISSORY ESTOPPEL APPLY)
[DOCKET NO. 1311]

Wendy Alison Nora, a contingent claimant and creditor in these proceedings,
acknowledges the promise to notify her of any attempt to sell her home under the Order to be
granted on Debtors' Motion to Authorize *DeMinimus* Sales Procedures under 11 USC sec. 363.

1. According to the Response filed on August 27, 2012, Debtors acknowledged that it
has seized her home, is claiming it as an asset in these proceedings and may attempt to sell "her
property" in the ordinary course of business or in a bundle of "assets" under the "De Minimus"
Sales Order it sought to have entered on August 29, 2012.

2. Because Debtors have stated that the property located at 6931 Old Sauk Road in Madison, Wisconsin is Ms. Nora's home and her property, the Debtors must be stayed from selling her home and her property and she must be restored to the possession of her property so that she can occupy her home until the final disposition of her state court appeal or pending further proceedings in this case and such a stay will be sought in the Court with jurisdiction to make such a determination.

3. Ms. Nora has repeatedly sought to clarify the Debtors' position with respect to her rights to her property in these proceedings and, on August 27, 2012, she received the Debtors' response to her Statement in which they made the admissions set forth in paragraph 4., below.

4. In their response to Ms. Nora's Statement of August 23, 2012, Debtors' admit that the real estate located at 6931 Old Sauk Road in Madison, Wisconsin is her home and her property.

5. At docket entry 1268, Debtors' specifically state:

"A. Reply to the Nora Statement

1. Ms. Nora has no objection to the Debtors' request to sell mortgage loans under the *De Minimis* Sale Procedures, but she demands notice of any attempt to sell her home pursuant to the *De Minimis* Sale Procedures. (Emphasis added.)

2. The Debtors typically sell real estate owned property in the ordinary course of business and currently do not intend to sell any real estate owned property pursuant to the *De Minimis* Sale Procedures. However, to the extent the Debtors seek to utilize the *De Minimis* Sale Procedures to sell Ms. Nora's property, the Debtors will provide Ms. Nora with notice in accordance with the *De Minimis* Sale Procedures."

6. Ms. Nora was not seeking hearing on the motion for approval of the *DeMinimus* Sale

and merely filed a Statement.

7. There was nothing in Ms. Nora's statement which required a ruling from this Court, given the Debtors' concession that she will receive notice of any attempt to sell her home as a *De Minimus* sale under the order Debtors seek.

8. Nevertheless, on August 27, 2012 (Docket Entry 1268), Debtors sought to have Ms. Nora's Statement overruled by this Court and, in so doing, took a position on the matter of law: to wit, Ms. Nora's property rights to her home which is listed on the schedules of Residential Funding Company, LLC (Case No. 12-12019) at page 22 of the attachment to its Schedule A (Exhibit A attached hereto.)

9. By admitting that the property located at 6931 Old Sauk Road in Madison, Wisconsin is Ms. Nora's home and her property in an effort to have the Court overrule Ms. Nora's Statement (Docket Entry 1268) and then listing Ms. Nora's Statement as an Objection on the Agenda of the proceedings for August 29, 2012 (Docket Entry 1284) Debtors relied upon their response (Docket Entry 1268) in obtaining the Order Approving *DeMinimus* Sales Procedures (Docket Entry 1311) and were thereby judicially estopped from taking a contrary position on the record of the proceedings because Ms. Nora acceded to their position that they would give her notice of any sale of her home and her property under the *DeMinimus* Sales Order.

10. Debtors had no authority to ask the Court to overrule Ms. Nora's Statement as an Objection (Docket Entry 1268).

11. Debtors' agreement in their response to Ms. Nora's simple request for notice if a sale of her home and her property were going to be undertaken in under the proposed *DeMinimus* Sales Procedure Order was a settlement and should have been scheduled as a settlement under

the Case Management Order.¹ Debtors put Ms. Nora to write an urgent explanation that there was no need for her to appear in the proceedings on August 29, 2012 lest it appear that she had failed to appear for a suddenly-noticed proceeding on an objection which she had not filed but which was inexplicably set for hearing as objection on Debtors' Agenda² filed on August 27, 2012 .

12. Debtors cannot now complain that Ms. Nora relied on her right to make a statement for the record to which they responded, admitting that she her home and her property is being held by the bankruptcy estate, when they *agreed* to her position in order to treat her statement as an objection for the sake of putting it on the Agenda in order to attempt to have their own

¹ The treatment of an agreement as an objection was in violation of the Case Management Order, which provides:

21. **Settlements.** In the event a matter is properly noticed for hearing and the parties reach agreement on a settlement of the dispute before the final hearing, the parties may announce the settlement at the scheduled hearing. In the event the Court determines that the notice of the dispute and the hearing constitutes adequate notice of the effects of the settlement (i.e., that the terms of the settlement are not materially different from those that parties in interest could have expected if the dispute were fully litigated), the Court may approve the settlement at the hearing without further notice of the terms of the settlement. In the event the Court determines at the scheduled hearing that additional or supplemental notice is required, the Debtors shall serve such notice in accordance with the Case Management Procedures set forth herein and a hearing to consider such settlement shall be on the next hearing day deemed appropriate by the Court.

² Debtors are authorized to set Agendas under the Case Management Order entered by the Court on May 23, 2012 but they do not have the authority to recast another party's position in the matter and schedule a party who is not objecting for hearing by placing a notice of the hearing on the hearing agenda. The Case Management Order provides:

19. **Hearing Agenda.** By 6:00 p.m. (New York City time) two business days prior to any Omnibus Hearing, counsel to the Debtors shall file with the Court an agenda for the hearing (the "**Agenda**") and shall serve such agenda in accordance with the Case Management Order. Each Agenda shall set forth: (i) the docket number and title of each matter scheduled for the Omnibus Hearing; (ii) all related pleadings, including any Objections filed to date and any Certificates of No Objection, and, as a result, whether each matter is contested or uncontested; (iii) whether any matters have settled or at such time are proposed to be adjourned to a subsequent hearing date; (iv) other comments that will assist the Court in preparing for the hearing; and (v) a suggestion for the order in which the matters should be addressed at the Omnibus Hearing. To the extent possible, contested matters for which an evidentiary hearing is scheduled to be conducted shall be placed at the end of the proposed Agenda.

agreement overruled at a hearing which they set on an objection which was not made.

13. If words are to have meaning, they must have meaning in legal proceedings. A statement is a statement; an objection (which must be timely filed) is an objection; a settlement is a settlement; and “her home” and “her property” means that Debtors are intend to sell Ms. Nora’s home and property, which is fraudulently listed as an asset of the Debtors’ estates.

14. The sudden scheduling of Ms. Nora’s statement with the Debtors’ response her statement should be “overruled” led to the filing of an acknowledgment of Debtors’ admission that “her home” and “her property” is pending sale by the bankruptcy estate. (Docket Entry 1268) and by so responding, with the stated request that the Court overrule her request for notice of proposed sale under the Order Approving the DeMinimus Sales Procedures to which they had already agreed, Debtors invoked judicial estoppel as to their admission should they prevail at the hearing on August 29, 2012.

15. Advance notice of intent to assert judicial estoppel, along with the acknowledgment of Debtors’ admission in their response to her Statement was filed on August 29, 2012 and whatever happened at the hearing which Ms. Nora never sought and which Debtors scheduled contrary to the Case Management Order, judicial estoppel now applies because Debtors prevailed in obtaining the Order without the provision for which they purported to settle with Ms. Nora: that they would give her notice of any proposed sale of her home and her property.

WHEREFORE, Creditor/Claimant Wendy Alison Nora acknowledges Debtors’ Response of August 27, 2012 and the judicial estoppel created herein, despite the fact that she did not object nor did she ever seek to participate in the proceedings to be held on August 29, 2012. She merely sought notice of the attempt to sell her home in a *DeMinimus* Sales proceeding

and Debtors' promised to provide such notice. Therefore, even if there were an objection before the Court (and there was not), such an objection would have led to a settlement by which Debtors' have agreed to provide Ms. Nora with notice prior to any attempt to sell her home and they are additionally bound by promissory estoppel if they attempt to sell her home and her property under the *DeMinimus* Sales Procedures.

Dated: August 31, 2012 at Minneapolis, Minnesota.

ACCESS LEGAL SERVICES

/s/ Wendy Alison Nora

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EXHIBIT A

In re: Residential Funding Company, LLC

Case No. 12-12019

Schedule A

Real Property

Description and location of property	Nature of debtor's interest in property	Current value of debtor's interest in property, without deducting any secured claim or exemption	Amount of secured claim
6931 Old Sauk Rd Madison, WI 53717	Residential Dwelling Reposessed and Foreclosed Asset	\$60,627.53	Unknown
701 Fern St Yeadon, PA 19050	Residential Dwelling Reposessed and Foreclosed Asset	\$37,435.80	Unknown
71221 Sea View Way Mecca, CA 92254	Residential Dwelling Reposessed and Foreclosed Asset	\$0.00	Unknown
720 Pioneer Rd Wilson, WI 54027	Residential Dwelling Reposessed and Foreclosed Asset	\$29,526.45	Unknown
7217 Chestnut Tree Ln Louisville, KY 40291	Residential Dwelling Reposessed and Foreclosed Asset	\$44,925.86	Unknown
7316 79Th Ave Se Snohomish, WA 98290	Residential Dwelling Reposessed and Foreclosed Asset	\$196,855.76	Unknown
7442 Rhoads Street Philadelphia, PA 19151	Residential Dwelling Reposessed and Foreclosed Asset	\$53,854.96	Unknown
7600 E Half Mile Rd East Leroy, MI 49051	Residential Dwelling Reposessed and Foreclosed Asset	\$16,981.63	Unknown
83-85 Whitney Street Unit 83 Northborough, MA 01532	Residential Dwelling Reposessed and Foreclosed Asset	\$79,060.03	Unknown
879 S Park Terr Union, NJ 07083	Residential Dwelling Reposessed and Foreclosed Asset	\$151,174.76	Unknown
88 S Peterson Rd Muskegon, MI 49445	Residential Dwelling Reposessed and Foreclosed Asset	\$75,298.67	Unknown
8974 Western Unit 201 Des Plaines, IL 60016	Residential Dwelling Reposessed and Foreclosed Asset	\$59,554.45	Unknown
914 N Austin Boulevard Unit B5 Oak Park, IL 60302	Residential Dwelling Reposessed and Foreclosed Asset	\$35,246.61	Unknown
944 Kings Way Canton, MI 48188	Residential Dwelling Reposessed and Foreclosed Asset	\$31,100.47	Unknown
998 Park Terr Dr Galt, CA 95632	Residential Dwelling Reposessed and Foreclosed Asset	\$96,769.42	Unknown
Total:		\$13,157,557.33	Unknown